Supreme Court, U.S.
FILED
941749 APR 20 1995
OFFICE OF THE CLERK

No. _____

IN THE
Supreme Court of the United States
APRIL TERM, 1995

SEAN JONES, *et al.*,

Petitioners,

v.

REGGIE WHITE, *et al.*,

Respondents;

NATIONAL FOOTBALL LEAGUE, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

APPENDIX FOR PETITION FOR WRIT OF CERTIORARI
VOLUME I OF IV

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 93-/3375/3381/3382/3403/3415MNMI		
Byron Evans, et al,	*	
	*	
Appellants,	*	Order Denying
	*	Petition for
v.	*	Rehearing and
	*	Suggestion for
National Football League, et al,	*	Rehearing En Banc
	*	
Appellees.	*	
	*	

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Loken took no part in the consideration or decision of these cases.

January 20, 1995

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit

Reggie WHITE; Michael Buck; Hardy Nickerson; Vann McElroy; Dave Duerson,

Plaintiffs-Appellees,

Byron Evans, Objector-Appellant,

v.

NATIONAL FOOTBALL LEAGUE; The Five Smiths Inc.; Buffalo Bills, Inc.;

Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland

Browns, Inc.; The Dallas Cowboys Football Club, Ltd.; PDB Sports, Ltd.; The

Detroit Lions, Inc.; The Green Bay Packers, Inc.; Houston Oilers, Inc.;

Indianapolis Colts, Inc.; Kansas City Chiefs Football Club, Inc.; The Los

Angeles Raiders, Ltd.; Los Angeles Rams Football Company, Inc.; Miami

Dolphins, Ltd.; Minnesota Vikings Football Club, Inc.; KMS Patriots, L.P.;

The New Orleans Saints Limited Partnership; New York Football Giants, Inc.;

New York Jets Football Club, Inc.,

Defendants-Appellees,

The Philadelphia Eagles Football Club, Inc.,

Defendant,

B & B Holdings, Inc.; Pittsburgh Steelers Sports, Inc.; The Chargers

Football; The San Francisco Forty-Niners, Ltd.;

Seattle Seahawks, Inc.;

Tampa Bay Area NFL Football Club, Inc.; Pro-Football, Inc., Defendants-

Appellees.

Reggie White; Michael Buck; Hardy Nickerson; Vann McElroy; Dave

Duerson, Plaintiffs-Appellees,

Sean JONES; Ken Norton, Jr.; Eric Allen; Patrick Hunter; William C.

Matthews; Leslie O'Neal; Eric Sanders; Chris Dishman; Lomas Brown; Neil

Smith; Van Waiters; Broderick Thompson; Curtis Duncan; Jerry Ball,

Intervenors-Appellants,

v.

NATIONAL FOOTBALL LEAGUE; The Five Smiths, Inc.; Buffalo Bills, Inc.;

Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland

Browns, Inc.; The Dallas Cowboys Football Club, Ltd.; PDB Sports, Ltd.; The

Detroit Lions, Inc.; The Green Bay Packers, Inc.; Houston Oilers, Inc.;

Indianapolis Colts, Inc.; Kansas City Chiefs Football Club, Inc.; The Los

Angeles Raiders, Ltd.; Los Angeles Rams Football Company, Inc.; Miami

Dolphins, Ltd.; Minnesota Vikings Football Club,

Inc.; KMS Patriots, L.P.;
The New Orleans Saints Limited Partnership; New York Football Giants, Inc.;
New York Jets Football Club, Inc.,
Defendants-Appellees,
The Philadelphia Eagles Football Club, Inc.,
Defendant,
B & B Holdings, Inc.; Pittsburgh Steelers Sports, Inc.; The Chargers
Football; The San Francisco Forty-Niners, Ltd.; Seattle Seahawks, Inc.;
Tampa Bay Area NFL Football Club, Inc.; Pro-Football, Inc., Defendants-
Appellees.
Reggie White; Michael Buck; Hardy Nickerson; Vann McElroy; Dave Duerson,
Plaintiffs-Appellees,
Terry Orr, Intervenor-Appellant,
Shane Collins; Ron Middleton, Intervenors,
Mark Schlereth, Intervenor-Appellant,
Kelly Goodburn; David Gulledge; Ed Simmons, Intervenors,
Matt Elliot; Joe Jacoby, Intervenors-Appellants,
Sidney Johnson; Kurt Gouveia; Ravin Caldwell, Intervenors,
Mark Rypien, Intervenor-Appellant,
James A. Jenkins; Johnny Thomas; Eric Williams; Don Warren; Jeff Bostic;

Todd Bowles, Intervenors,

Ray Brown, Intervenor-Appellant,

Jason Buck, Intervenor,

Earnest A. Byner, Intervenor-Appellant,

Desmond Howard; Anthony Johnson; Brian Mitchell, Intervenors,

Ricky Sanders, Intervenor-Appellant,

Paul SIEVER, Intervenor,

v.

NATIONAL FOOTBALL LEAGUE; The Five Smiths, Inc.; Buffalo Bills, Inc.;

Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland

Browns, Inc.; The Dallas Cowboys Football Club, Ltd.; PDB Sports, Ltd.; The

Detroit Lions, Inc.; The Green Bay Packers, Inc.; Houston Oilers, Inc.;

Indianapolis Colts, Inc.; Kansas City Chiefs Football Club, Inc.; The Los

Angeles Raiders, Ltd.; Los Angeles Rams Football Company, Inc.; Miami

Dolphins, Ltd.; Minnesota Vikings Football Club, Inc.; KMS Patriots, L.P.;

The New Orleans Saints Limited Partnership; New York Football Giants, Inc.;

New York Jets Football Club, Inc., Defendants-Appellees,

The Philadelphia Eagles Football Club, Inc.,

Defendant,

B & B Holdings, Inc.; Pittsburgh Steelers Sports, Inc.; The Chargers

Football; The San Francisco Forty-Niners, Ltd.; Seattle Seahawks, Inc.;

Tampa Bay Area NFL Football Club, Inc.; Pro-Football, Inc., Defendants-

Appellees.

Reggie White; Michael Buck; Hardy Nickerson; Vann McElroy; Dave

Duerson, Plaintiffs-Appellees,

Mark DUSBABEK; Carl Lee; Audray McMillian; Felix Wright; Cody Kisien; Mark

Harper; Sammy Martin; Don Beebe; Gregory Scales, Objectors-Appellants,

v.

NATIONAL FOOTBALL LEAGUE; The Five Smiths, Inc.; Buffalo Bills, Inc.;

Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland

Browns, Inc.; The Dallas Cowboys Football Club, Ltd.; PDB Sports, Ltd.; The

Detroit Lions, Inc.; The Green Bay Packers, Inc.; Houston Oilers, Inc.;

Indianapolis Colts, Inc.; Kansas City Chiefs Football Club, Inc.; The Los

Angeles Raiders, Ltd.; Los Angeles Rams Football Company, Inc.; Miami

Dolphins, Ltd.; Minnesota Vikings Football Club, Inc.; KMS Patriots, L.P.;

The New Orleans Saints Limited Partnership; New York Football Giants, Inc.;

New York Jets Football Club, Inc., Defendants-Appellees,

The Philadelphia Eagles Football Club, Inc., Defendant,

B & B Holdings, Inc.; Pittsburgh Steelers Sports, Inc.; The Chargers

Football; The San Francisco Forty-Niners, Ltd.; Seattle Seahawks, Inc.;

Tampa Bay Area NFL Football Club, Inc.; Pro-Football, Inc., Defendants-

Appellees.

Reggie WHITE; Michael Buck; Hardy Nickerson; Vann McElroy; Dave Duerson,

Plaintiffs-Appellees,

Maurice Hurst; John Fourcade, Objectors-Appellants,

v.

NATIONAL FOOTBALL LEAGUE; The Five Smiths, Inc.; Buffalo Bills, Inc.;

Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland

Browns, Inc.; The Dallas Cowboys Football Club, Ltd.; PDB Sports, Ltd.; The

Detroit Lions, Inc.; The Green Bay Packers, Inc.; Houston Oilers, Inc.;

Indianapolis Colts, Inc.; Kansas City Chiefs Football Club, Inc.; The Los Angeles Raiders, Ltd.; Los Angeles Rams Football Company, Inc.; Miami Dolphins, Ltd.; Minnesota Vikings Football Club, Inc.; KMS Patriots, L.P.; The New Orleans Saints Limited Partnership; New York Football Giants, Inc.; New York Jets Football Club, Inc., Defendants-Appellees,

The Philadelphia Eagles Football Club, Inc., Defendant,

B & B Holdings, Inc.; Pittsburgh Steelers Sports, Inc.; The Chargers Football; The San Francisco Forty-Niners, Ltd.; Seattle Seahawks, Inc.; Tampa Bay Area NFL Football Club, Inc.; Pro-Football, Inc., Defendants-Appellees.

Nos. 93-3375, 93-3381, 93-3382, 93-3403, 93-3415.

United States Court of Appeals,

Eighth Circuit.

Submitted Oct. 12, 1994.

Decided Dec. 6, 1994.

Rehearing and Suggestion for Rehearing En Banc Denied Jan. 20, 1995. [FN*]

FN* Judge Loken took

no part in the consideration or decision of these cases.

Before McMILLIAN, HANSEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

MORRIS SHEPPARD ARNOLD, Circuit Judge.

Twenty-six football players ("objectors") appeal the settlement of an antitrust action brought by a certified class of football players against the National Football League. The district court [FN1] initially certified the class in an order issued on April 30, 1993, White v. NFL, 822 F.Supp. 1389 (D.Minn.1993), and approved the settlement in an order and a judgment decree issued on August 20, 1993, White v. NFL, 836 F.Supp. 1458 (D.Minn.1993); White v. NFL, 836 F.Supp. 1508 (D.Minn.1993). The objectors now challenge the district court's certification of a mandatory class represented by the named plaintiffs, the district court's approval of the settlement agreement, and the district court's jurisdiction to enjoin related actions. We affirm.

FN1. The Honorable David S. Doty, United States District Judge for the District of Minnesota.

I.

The settlement agreement purports to end a six-year dispute between the NFL member teams and their player-employees. The central issue in this labor dispute

was the conflict between the players' desire for complete free agency and the NFL's desire to maintain competitive balance among its teams. A 1987 player strike failed to produce a compromise, and various antitrust actions followed. See, e.g., Powell v. NFL, 711 F.Supp. 959 (D.Minn.1989), 930 F.2d 1293 (8th Cir.1989), cert. denied, 498 U.S. 1040, 111 S.Ct. 711, 112 L.Ed.2d 700 (1991) (holding that nonstatutory labor exemption precluded antitrust challenge); Powell/McNeil v. NFL, 764 F.Supp. 1351 (D.Minn.1991) (recognizing National Football League Players Association's disclaimer of its status as exclusive collective bargaining representative, thus ending the nonstatutory labor exemption); and McNeil v. NFL, 1992 WL 315292 (D.Minn.1992) (special verdict finding that employment rules harmed competition for players' services and were more restrictive than necessary to achieve competitive balance among teams). Shortly after the special verdict in McNeil, id., a group of players filed White v. NFL, the class action which resulted in the challenged settlement.

In early 1993, the parties to White v. NFL agreed to settle that case as well as other litigation related to the ongoing employment dispute. The District Court assisted in the settlement process by conditionally certifying a non-opt-out class pursuant to Fed.R.Civ.P. 23(b)(1). White v. NFL, Civ. No. 4- 92-906 (D.Minn.1993); White v. NFL, Civ. No. 4-92-906 (D.Minn.1993). The class consisted of (i) all players who have been, are now, or will

be under contract to play professional football for an NFL club at any time from August 31, 1987, to the date of final approval of the settlement of this action and the determination of any appeal therefrom, and (ii) all college and other football players who, as of August 31, 1987, through the date of final approval of the settlement of this action and the determination of any appeals therefrom, have been, are now, or will be eligible to play football as a rookie for an NFL team. Id. The parties then entered into a settlement agreement, which received preliminary approval from the district court. White v. NFL, Civ. No. 4-92-906 (D.Minn.1993). In accordance with the district court's instructions, the White plaintiffs notified class members of the proposed settlement by mail and by publication of a summary in a national newspaper. Several weeks later the district court convened a hearing to provide those who objected to the proposed settlement with an opportunity to present their views. The district court then issued a lengthy order overruling these objections and enjoining individual lawsuits by class members with similar claims. White v. NFL, 822 F.Supp. 1389 (D.Minn.1993). Approximately one week later, the NFL and the National Football League Players Association entered into a new collective bargaining agreement incorporating the terms of the settlement agreement as well as other rules regarding NFL player-employees. Upon motion to amend the original settlement to conform to the terms of the new collective bargaining agreement, the district court agreed to repeat the

settlement approval process as well as to make additional factual findings. White v. NFL, 836 F.Supp. 1458 (D.Minn.1993). The process of notification, reviewal of objections, and hearings culminated on August 20, 1993, with the district court's entry of an order approving the settlement agreement, id., and final consent judgment. White v. NFL, 836 F.Supp. 1508 (D.Minn.1993).

II.

Mandatory class certification pursuant to Fed.R.Civ.P. 23(b)(1) is subject to the discretion of the district court. See, e.g., Chaffin v. Rheem Mfg. Co., 904 F.2d 1269, 1275 (8th Cir.1990). The objectors contend that the district court erred in failing to apply the standard set forth by the Supreme Court in Phillips Petroleum Co. v. Shutts, which required that "an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an 'opt out' or 'request for exclusion' form to the court," at least in cases seeking primarily monetary damages. 472 U.S. 797, 811-12, 105 S.Ct. 2965, 2974, 86 L.Ed.2d 628 (1985). In the present case, however, there exists no absent plaintiff whose due process rights must be protected in this fashion. Rather, each of the objectors was subject to the jurisdiction of the district court. See White v. NFL, 836 F.Supp. at 1501-1504.

For a court to exercise personal jurisdiction, the party must have "minimum contacts" with the forum such that the maintenance of the suit does not violate "traditional

notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945), citing Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 342-43, 85 L.Ed. 278 (1940). This personal jurisdiction requirement is not an Article III restriction on the federal courts, but rather an individual liberty interest flowing from the Due Process Clause. Insurance Corp. of Ireland, Ltd., et al. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702, 102 S.Ct. 2099, 2104, 72 L.Ed.2d 492 (1982). Like other such rights, therefore, the personal jurisdiction requirement can be waived. Id. at 703, 102 S.Ct. at 2105. Fed.R.Civ.P. 12(h) contemplates the involuntary waiver of a defense of lack of personal jurisdiction if it is not included in a motion or in a responsive pleading. We have previously held, moreover, that the rule "sets only the outer limits of waiver; it does not preclude waiver by implication." Yeldell v. Tutt, 913 F.2d 533, 539 (8th Cir.1990), citing Marquest Medical Prods. v. EMDE Corp., 496 F.Supp. 1242, 1245 n. 1 (D.Col.1980). Thus when a party had actively participated in discovery, filed various motions, participated in a five-day trial, and filed post-trial motions, the unsupported assertion of a jurisdictional defense in answer to the original complaint did not preclude a determination that the party intended to submit to the court's jurisdiction. Yeldell at 539. The Third Circuit has concluded, we think correctly, that a party to a mandatory class action who appears in court to contest inclusion in the class is analogous to a party

who appears merely to contest jurisdiction, and should be deemed to consent to jurisdiction only if it actually litigates the adequacy of class representation or the underlying merits of the case. In re Real Estate Title and Settlement Servs. Antitrust Litig., 869 F.2d 760, 770-71 (3rd Cir.1989), cert. denied, 493 U.S. 821, 110 S.Ct. 77, 107 L.Ed.2d 44 (1989). In the present case, each of the objectors either had minimum contacts with the forum or submitted himself to the jurisdiction of the district court by appearing through counsel to contest the merits of the settlement, offering testimony, cross-examining witnesses, and filing numerous memoranda of law regarding the settlement. White v. NFL, 836 F.Supp. at 1503. The district court's inclusion of the objectors in the mandatory class thus constituted a proper exercise of discretion.

Because of our view of the jurisdictional issue, we do not reach the issue raised by the objectors and left undecided by Shutts, namely whether a trial court may certify a non-opt-out plaintiff class in an action brought primarily for injunctive relief under Fed.R.Civ.P. 23(b)(1). Shutts, 472 U.S. at 811 n. 3, 105 S.Ct. at 2974 n. 3.

III.

Failing to upset certification of the class, the objectors argue that the named plaintiffs and their counsel inadequately represented the class. Among the prerequisites to a class action is Fed.R.Civ.P. 23(a)(4), which requires that the representative parties "fairly and adequately protect the interests of the class." The objectors cite several

attorneys' prior involvement in related lawsuits, as well as specific awards to the named plaintiffs, as evidence that the settlement agreement was based primarily on the self-interest of the named plaintiffs and their counsel. The adequacy of class representation, however, is ultimately determined by the settlement itself. See In re Corrugated Container Antitrust Litig., 643 F.2d 195, 212 (5th Cir.1981). The district court noted that the previous experience of counsel was "likely a prerequisite to the parties' ultimate agreement to settle," White v. NFL, 822 F.Supp. at 1405, and, more to the point, did not affect counsel's ability to represent the plaintiff class vigorously. With respect to the representative parties' awards, the district court recognized the potential for controversy but cited a series of cases in which named plaintiffs received additional awards based on their efforts and risks in the case. White v. NFL, 822 F.Supp. at 1406, citing, e.g., Thornton v. East Texas Motor Freight, 497 F.2d 416, 420 (6th Cir.1974); Enterprise Energy Corp. v. Columbia Gas Transmission Corp., 137 F.R.D. 240, 250 (S.D.Ohio 1991). There is, moreover, substantial evidence that the settlement agreement provides significant benefits to the class. White v. NFL, 836 F.Supp. at 1479-83. The district court thus reasonably concluded that the interests of the plaintiff class were protected by the settlement agreement.

IV.

The objectors also contest the district court's final approval of the settlement agreement on the grounds that

class members were given inadequate notice of the proposed settlement. Fed.R.Civ.P. 23(e) requires only that notice be given "in such a manner as the court directs" prior to settlement. The district court required direct mailing of notice to all class members' last known address approximately one month prior to the first settlement hearing, as well as publication of notice in a national newspaper. See Grunin v. International House of Pancakes, 513 F.2d 114, 121 (8th Cir.1974) (stating that individualized notice by mail is the best notice practicable in a class action contest) (citations omitted). This notification process was repeated before the hearing regarding the revised settlement agreement. As the district court noted, the proposed settlement agreement also received extensive coverage in the national press. Finally, the district court entertained all objections offered by class members as well as other interested parties, regardless of whether the objections had been submitted in writing by the announced deadline. Under these circumstances, the class members received adequate notice of the proposed settlement and were given multiple opportunities to challenge their inclusion in the plaintiff class.

V.

Finally, the objectors allege that the district court lacked jurisdiction to enjoin related actions pursued in other fora. The district court cites two independently sufficient bases for jurisdiction, personal jurisdiction over the objectors and the All-Writs Act, 28 U.S.C. s 1651. The

All-Writs Act states in relevant part that "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." While the All-Writs Act is not an independent grant of jurisdiction, the ability to facilitate the present settlement by enjoining related suits of absent class members is ancillary to jurisdiction over the class action itself. See, e.g., In re Corrugated Container Antitrust Litig., 659 F.2d 1332, 1334 (5th Cir.1981), cert. denied, 456 U.S. 936, 102 S.Ct. 1993, 72 L.Ed.2d 456 (1982). If the district court were to approve the settlement without enjoining at least related claims, the agreement would be inadequate to end litigation relating to the labor dispute. Therefore, the district court properly exercised its jurisdiction by enjoining related actions.

VI.

For the foregoing reasons, we affirm the approval of the settlement agreement by the district court.

Reggie WHITE, Michael Buck, Hardy Nickerson, Vann McElroy and Dave Duerson,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE; The Five Smiths, Inc.; Buffalo Bills, Inc.; Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland Browns, Inc.; The Dallas Cowboys Football Club, Ltd.; PDB Sports, Ltd.; The Detroit Lions, Inc.; The Green Bay Packers, Inc.; Houston Oilers, Inc.; Indianapolis Colts, Inc.; Kansas City Chiefs Football Club, Inc.; The Los Angeles Raiders, Ltd.; Los Angeles Rams Football Company, Inc.; Miami Dolphins, Ltd.; Minnesota Vikings Football Club, Inc.; KMS Patriots Limited Partnership; The New Orleans Saints Limited Partnership; New York Football Giants, Inc.; New York Jets Football Club, Inc.; The Philadelphia Eagles Football Club, Inc.; B & B Holdings, Inc.; Pittsburgh Steelers Sports, Inc.; The Chargers Football Company; The San Francisco Forty-Niners, Ltd.; The Seattle Seahawks, Inc.; Tampa Bay Area NFL Football Club, Inc.; and Pro-

Football, Inc.; Defendants.

Civ. No. 4-92-906.

United States District Court,

D. Minnesota,

Fourth Division.

Aug. 20, 1993.

ORDER

DOTY, District Judge.

This matter is before the court on defendants' (other than the Philadelphia Eagles) [FN1] motion to hold objector Leslie O'Neal in contempt of this court's order of April 30, 1993. The facts underlying this matter are largely undisputed. On March 3, 1993, defendants moved for an order to show cause why the court should not enjoin all pending and future cases brought by individual class members challenging the same conduct at issue in the present case. On March 4, 1993, the court issued an order to show cause, which included a briefing schedule and a hearing date for the motion.

FN1. Counsel for the Philadelphia Eagles informed the court that they take no position on the present motion. Accordingly, any reference to "defendants" does not include the Eagles.

On March 18, 1993, a group of players, including

Leslie O'Neal, filed a memorandum in opposition to defendants' motion to enjoin. At the hearing on April 16, 1993, counsel for Mr. O'Neal argued that the court should not grant the antisuit injunction. On April 30, 1993, the court issued an order which, inter alia, granted defendants' motion to enjoin various pending lawsuits, which were cited in the order. [FN2] The cases cited included O'Neal v. NFL, No. 92-4368 (C.D.Cal.).

FN2. The actions specifically enjoined are: (a) Hurst v. NFL, No. 92- 3263 (E.D.La.); (b) Dusbabek v. NFL, No. 4-93-126 (D.Minn.); (c) Lee v. NFL, No. 4-93-125 (D.Minn.); (d) McMillian v. NFL, No. 4-93-99 (D.Minn.); (e) Wright v. NFL, No. 4-93-124 (D.Minn.); (f) Jones v. NFL, No. 92-2512 (C.D.Cal.); (g) Sanders v. NFL, No. 92-4365 (C.D.Cal.); (h) Matthews v. NFL, No. 92-4370 (C.D.Cal.); (i) Hunter v. NFL, No. 92-4373 (C.D.Cal.); (j) O'Neal v. NFL, No. 92-4368 (C.D.Cal.); (k) Allen v. NFL, No. 92-7536 (C.D.Cal.); (l) Norton v. NFL, No. 93-0029 (C.D.Cal.); (m) Hurst & Fourcade v. NFL, No. 93-0766 (E.D.La.); (n) Harper v. NFL, No. 4-93-314 (D.Minn.); (o) Risien v. NFL, No. 4-93-182 (D.Minn.); (p) Duncan v. NFL, No. 93-1481 (C.D.Cal.); and (q) Evans v. NFL, Civ. No. 92-878 (D.Ariz.). See White v. National Football League, 822 F.Supp. 1389, 1436-37 (D.Minn.1993).

The order further stated that: All members of the

plaintiff class in the present action are permanently enjoined from further pursuit or prosecution of the above listed actions, or any other actions now pending that purport to challenge the same player practices at issue here, or challenge the Stipulation and Settlement Agreement in this action. In addition, all members of the plaintiff class are permanently enjoined from initiating any such actions in the future. The court shall also retain jurisdiction over this action to effectuate and enforce the terms of the injunctions and Stipulation and Settlement Agreement. Id. at 1437.

Status reports concerning several of the cases enjoined by this court were subsequently filed in the Central District of California. The status reports disclosed various rulings set forth in this court's order of April 30, 1993, including the foregoing injunctive relief and this court's determination that various players, including Leslie O'Neal, [FN3] had voluntarily submitted to this court's jurisdiction by actively participating in the litigation of the merits of the present action. Id. at 1432-33. [FN4]

FN3. Those players are: Sean Jones, Eric Allen, Leslie O'Neal, Eric Sanders, Ken Norton, Jr., Curtis Duncan, Patrick Hunter, William C. Matthews, Cris Dishman, Lomas Brown, Neil Smith, Van Waiters, Broderick Thompson and Jerry Ball. Id. at 1432.

FN4. The order specifically stated that: As a result of their various filings with the court, their appearance to

object to the settlement and their motions to intervene, the court finds that [the listed] players have submitted to the court's jurisdiction because they have not confined their arguments to the claims that they are beyond the court's jurisdiction, but rather have objected to the merits of the proposed settlement. Id. at 1432.

On May 17, 1993, Judge Consuelo B. Marshall of the United States District Court for the Central District of California, on her own motion, removed the case of O'Neal v. NFL, No. 92-4368 (C.D.Cal.) "from the active caseload pending further Order of this Court." [FN5]

FN5. Judge Marshall also removed from the active caseload various other cases enjoined by this court's order of April 30, 1993.

On July 6, 1993, counsel for Leslie O'Neal brought a motion before Judge Marshall to return the case of O'Neal v. NFL, No. 92-4368 (C.D.Cal.) to the active caseload. [FN6] In his papers, Mr. O'Neal requested that Judge Marshall: (1) return his case to the active calendar; (2) lift the stipulated stay of his action; and (3) permit him "to prosecute his damages action against defendants without further delay." See Memorandum of Points and Authorities in Support of Motion to Return Case to the Active Calendar at 4 (July 2, 1993). The memorandum further stated that Mr. O'Neal was "prepared to move forward immediately

with partially dispositive motions and trial." Id. at 17.

FN6. The papers filed included a notice of motion, the motion, a memorandum of points and authorities in support thereof, a supporting declaration of counsel Suzelle M. Smith, and a proposed order.

On July 7, 1993, this court conducted a hearing on various motions in the present case, including motions to amend the White Settlement Agreement and for further factual findings. At the hearing, defendants' counsel brought Mr. O'Neal's motion in the Central District of California to this court's attention and stated that defendants believed that the motion violated this court's order of April 30, 1993. See Transcript of Final Fairness Hearing at 54-55 (D.Minn. July 7, 1993). Defendants' counsel requested that the court hold Mr. O'Neal "in contempt of the court's injunction entered April 30th." Id. at 117. Defendants' counsel also asked: that the court suspend or stay the determination of any sanction that would be applied to them pending the outcome of their appeal to the Eighth Circuit. We would herewith make that request. Id. This court informed Mr. O'Neal's counsel that "you are on notice at least of the request", and that she should "give notice that the court is thinking about an order to show cause." Id. at 118-19. The court then requested that defendants make any motion for an order to show cause by July 15, 1993. The court also stated that anything else

concerning that issue could be brought to the court's attention "informally; that is by letter form rather than a formal brief." Id. at 120.

On July 12, 1993, defendants moved for an order to show cause, and the court granted that motion in its order of July 13, 1993. On August 10, 1993, the court conducted a hearing on the present matter.

Based on the arguments of counsel, and the file, record and proceedings herein, the court makes the following findings:

1. The court has personal jurisdiction over Mr. O'Neal because he voluntarily submitted to this court's jurisdiction by actively litigating the underlying merits of the present case.

2. The court also has jurisdiction over Mr. O'Neal pursuant to the court's certification, under Federal Rule of Civil Procedure 23(b)(1), of a mandatory class of which Mr. O'Neal is a member.

3. In addition, the court has jurisdiction to enjoin O'Neal v. NFL, No. 92-4368 (C.D.Cal.) under the All-Writs Act. 28 U.S.C. s 1651(a).

4. In its order of April 30, 1993, the court permanently enjoined Mr. O'Neal "from further pursuit or prosecution of" his action, O'Neal v. NFL, No. 92- 4368 (C.D.Cal.).

5. On July 6, 1993, Mr. O'Neal filed a notice of motion, a motion and supporting papers to return that case to the active caseload of the Central District of California.

6. Mr. O'Neal's motion to return his case to the active caseload constitutes "further pursuit or prosecution of" O'Neal v. NFL, No. 92-4368 (C.D.Cal.), in violation of the express terms of this court's order of April 30, 1993.

7. Based on the foregoing, the court finds that Mr. O'Neal is in contempt of this court's order of April 30, 1993.

Accordingly, IT IS HEREBY ORDERED that:

1. Defendants' motion to hold Mr. O'Neal in contempt is granted.

2. Mr. O'Neal may purge himself of this contempt by withdrawing his motion to return his case to the active caseload of the Central District of California by August 27, 1993, notifying this court of such withdrawal, and taking no further action inconsistent with this court's order of April 30, 1993.

3. If the motion is not withdrawn, the court will entertain a motion to show cause why the court should not hold Mr. O'Neal's counsel in contempt of this court's order of April 30, 1993.

4. In the event that the contempt is not purged, the court will defer imposition of sanctions pending the outcome of Mr. O'Neal's appeal, if any, in the present action.

Reggie WHITE, Michael Buck, Hardy Nickerson, Vann McElroy and Dave Duerson,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE; The Five Smiths, Inc.; Buffalo Bills, Inc.; Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland Browns, Inc.; The Dallas Cowboys Football Club, Ltd.; PDB Sports, Ltd.; The Detroit Lions, Inc.; The Green Bay Packers, Inc.; Houston Oilers, Inc.; Indianapolis Colts, Inc.; Kansas City Chiefs Football Club, Inc.; The Los Angeles Raiders, Ltd.; Los Angeles Rams Football Company, Inc.; Miami Dolphins, Ltd.; Minnesota Vikings Football Club, Inc.; KMS Patriots Limited Partnership; The New Orleans Saints Limited Partnership; New York Football Giants, Inc.; New York Jets Football Club, Inc.; The Philadelphia Eagles Football Club, Inc.; B & B Holdings, Inc.; Pittsburgh Steelers Sports, Inc.; The Chargers Football Company; The San Francisco Forty-Niners, Ltd.; The Seattle Seahawks, Inc.; Tampa Bay Area NFL Football Club, Inc.; and Pro-

Football, Inc.; Defendants.

Civ. No. 4-92-906.

United States District Court,

D. Minnesota,

Fourth Division.

Aug. 20, 1993.

DOTY, District Judge.

There having been executed a Stipulation and Settlement Agreement, dated February 26, 1993, providing for settlement of this action upon the terms and conditions set forth therein; and

There having been an application to this court for an order and judgment pursuant to Rule 23(e) of the Federal Rules of Civil Procedure approving the February 26 Stipulation and Settlement Agreement as fair, reasonable, and adequate; and

This court having determined by an order dated February 17, 1993 that this action may be maintained as a class action pursuant to Rule 23(b)(1) of the Federal Rules of Civil Procedure, on behalf of (i) all players who have been, are now, or will be under contract to play professional football for an NFL club at any time from August 31, 1987 to the date of final approval of the settlement of this action and the determination of any appeal therefrom, and (ii) all college and other football players who, as of August 31, 1987 through the date of final approval of the settlement of

this action and the determination of any appeals therefrom, have been, are now, or will be eligible to play football as a rookie for an NFL team; and

This court, by an order dated February 26, 1993, having determined preliminarily that the original Stipulation and Settlement Agreement is fair, reasonable, and adequate, and having approved two proposed forms of notice, and having directed that notice be given to all class members, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, informing them of the proposed settlement of the action and of a hearing to be held on April 16, 1993 to determine whether the original Stipulation and Settlement Agreement should be finally approved by the court as fair, reasonable, and adequate; and due proof of mailing of the Notice to Class and of publication of the Summary Notice having been filed with the court; and

A hearing having been held before this court on April 16, 1993, pursuant to the court's February 26, 1993 order, at which all class members were afforded the opportunity to object to or otherwise express their views on the fairness, reasonableness, and adequacy of the settlement embodied in the February 26 Stipulation and Settlement Agreement; and

This court having considered the objections of certain class members as well as the Philadelphia Eagles and other interested persons; and

This court having determined that plaintiffs' predominant claim for relief is structural, injunctive relief

and therefore that mandatory class certification pursuant to Rule 23(b)(1) is proper; and

This court after due deliberation upon presentation of all the relevant facts, having rendered its determination that the February 26 Stipulation and Settlement Agreement is fair, reasonable, and adequate and should be approved in all respects, and that all objections to the proposed settlement should be overruled, for the reasons stated in the court's order of April 30, 1993, 822 F.Supp. 1389; and

The parties, on May 6, 1993 and before entry of a judgment pursuant to Rule 23(e), having agreed to certain amendments to the February 26 Stipulation and Settlement Agreement; [FN1] and

FN1. The Philadelphia Eagles object to this reference to "the parties", contending that they do not agree to proposed amendments. For the reasons set forth in the court's order of August 19, 1993, the court finds that the Eagles have no standing to object to that wording and are bound by the actions of the NFL Management Council. See White v. National Football League, 836 F.Supp. 1458, 1491-92 (D.Minn.1993).

There having been an application to this court for an order and judgment pursuant to Rule 23(e) of the Federal Rules of Civil Procedure approving the Stipulation and Settlement Agreement, as amended, as fair, reasonable, and adequate; and

A hearing having been held before this court on June 1, 1993, at which all class members and other interested persons were afforded the opportunity to object to or otherwise express their views as to whether the proposed amendments to the Stipulation and Settlement Agreement should be preliminarily approved as fair, reasonable, and adequate, and whether notice to the class should be ordered; and

This court, by an order dated June 2, 1993, having determined preliminarily that the proposed amendments to the Stipulation and Settlement Agreement were fair, reasonable, and adequate to all class members, and having approved two forms of notice, and having directed that notice be given to all class members likely to be affected by the proposed amendments to the Stipulation and Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, informing them of the proposed amendments to the settlement of the action and of a hearing to be held on July 7, 1993 to determine whether the Stipulation and Settlement Agreement, as amended, should be finally approved by the court as fair, reasonable, and adequate; and due proof of mailing of the Notice to Class and of publication of the Summary Notice having been filed with the court; and

A hearing having been held before this court on July 7, 1993, pursuant to the court's June 2, 1993 order, at which all class members were afforded the opportunity to object to or otherwise express their views on the fairness,

reasonableness, and adequacy of the settlement embodied in the Stipulation and Settlement Agreement, as amended; and

This court having once again fully considered the objections of certain class members as well as the Philadelphia Eagles; and

This court after due deliberation upon presentation of all the relevant facts, having rendered its determination that the settlement embodied in the Stipulation and Settlement Agreement, as amended, is fair, reasonable, and adequate and should be approved in all respects, and that all objections to the proposed settlement, and the amendments thereto, should be overruled, and hereby are overruled, for the reasons stated in the court's accompanying opinion of August 19, 1993,

THEREFORE, without trial or final adjudication of any issue of fact or law herein and upon consent of the parties, it is:

ORDERED AND ADJUDGED, that the terms of the settlement of this action as set forth in the Stipulation and Settlement Agreement dated February 26, 1993, as amended on May 6, 1993, a copy of which is annexed hereto as Exhibit 1, are a fair, reasonable, and adequate settlement of the claims asserted in this action, and that said Stipulation and Settlement Agreement, as amended, be, and it hereby is, approved in all respects; and it is further

ORDERED AND ADJUDGED, that the terms of the Stipulation and Settlement Agreement, as amended, are incorporated into and made part of this Final Consent

Judgment; and it is further

ORDERED AND ADJUDGED, that the parties are hereby authorized and directed to consummate the terms and provisions of the Stipulation and Settlement Agreement, as amended; and it is further

ORDERED AND ADJUDGED, that the claims and counterclaims set forth in this action be, and they hereby are, dismissed on the merits, with prejudice and without costs (except those costs set forth in the Stipulation and Settlement Agreement, as amended), and the action is discontinued accordingly; and it is further

ORDERED AND ADJUDGED, that this Final Consent Judgment be, and it hereby is, a full and final discharge of, and conclusive as to, any and all liability with respect to the claims or counterclaims as specified in Article XIX of the Stipulation and Settlement Agreement, as amended; and it is further

ORDERED AND ADJUDGED, that in accordance with the terms of the Stipulation and Settlement Agreement, as amended, and without in any way affecting the finality of this Final Consent Judgment, this court retains exclusive jurisdiction over this action to effectuate and enforce the terms of the Stipulation and Settlement Agreement, as amended, and this Judgment; and it is further

ORDERED AND ADJUDGED, that no application for attorneys' fees or costs will be submitted by any party in this case.

LET JUDGMENT BE ENTERED

ACCORDINGLY.

Reggie WHITE, Michael Buck, Hardy Nickerson, Vann McElroy and Dave Duerson,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE; The Five Smiths, Inc.; Buffalo Bills, Inc.; Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland Browns, Inc.; The Dallas Cowboys Football Club, Ltd.; PDB Sports, Ltd.; The Detroit Lions, Inc.; The Green Bay Packers, Inc.; Houston Oilers, Inc.; Indianapolis Colts, Inc.; Kansas City Chiefs Football Club, Inc.; The Los Angeles Raiders, Ltd.; Los Angeles Rams Football Company, Inc.; Miami Dolphins, Ltd.; Minnesota Vikings Football Club, Inc.; KMS Patriots Limited Partnership; The New Orleans Saints Limited Partnership; New York Football Giants, Inc.; New York Jets Football Club, Inc.; The Philadelphia Eagles Football Club, Inc.; B & B Holdings, Inc.; Pittsburgh Steelers Sports, Inc.; The Chargers Football Company; The San Francisco Forty-Niners, Ltd.; The Seattle Seahawks, Inc.; Tampa Bay Area NFL Football Club, Inc.; and Pro-

Football, Inc., Defendants.

Civ. No. 4-92-906.

United States District Court,

D. Minnesota,

Fourth Division.

Aug. 19, 1993.

DOTY, District Judge.

This matter is before the court on the following motions:

1. A motion by the named plaintiffs to amend the Stipulation and Settlement Agreement in the present action;

2. A motion by the named plaintiffs and defendants, other than the Philadelphia Eagles [FN1], for final approval of the Stipulation and Settlement Agreement as modified by the various amendments agreed to by the parties;

FN1. The Philadelphia Eagles purport to object to the various motions before the court. Thus, when discussing those motions, the terms "defendants" and "parties", unless otherwise indicated, do not include the Philadelphia Eagles.

3. A motion by the named plaintiffs and defendants, other than the Philadelphia Eagles, for entry of various factual findings concerning the reconstitution and recognition of the National Football League Players Association ("NFLPA") as a labor union and the application

of the nonstatutory labor exemption to various terms of a recently executed collective bargaining agreement; and

4. A motion by the named plaintiffs to sanction the Philadelphia Eagles.

Based on a review of the file, record and proceedings herein, the court grants the motion to amend the Stipulation and Settlement Agreement, grants final approval of the amended version of the Stipulation and Settlement Agreement, denies plaintiffs' motion for sanctions, overrules all objections, grants the motion for further factual findings and makes the findings set forth below.

BACKGROUND [FN2]

FN2. The history of the present action and various other lawsuits involving players and the National Football League is more fully set forth in the court's opinion of April 30, 1993. White v. National Football League, 822 F.Supp. 1389 (D.Minn.1993).

This antitrust action was filed on September 21, 1992, less than two weeks after a jury rendered its verdict in McNeil v. National Football League, 1992-2 Trade Cas. (CCH) P 69,982, 1992 WL 315292 (D.Minn. Sept. 10, 1992) (special verdict). [FN3] The five named plaintiffs [FN4] brought the present action on behalf of:

FN3. In McNeil, eight individual football players whose contracts with their National Football League ("NFL") employers expired on February 1, 1990, brought

an action alleging, inter alia, that the NFL's right of first refusal/compensation rules, as set forth in Plan B, violate Section 1 of the Sherman Act.

FN4. Those players are: Reggie White, Michael Buck, Hardy Nickerson, Vann McElroy and Dave Duerson.

(i) all players who have been, are now, or will be under contract to play professional football for an NFL club at any time from August 31, 1987 to the date of final judgment in this action and determination of any appeal therefrom, and (ii) all college and other football players who, as of August 31, 1987, to the date of final judgment in this action and the determination of any appeal therefrom, have been, are now, or will be eligible to play football as a rookie for an NFL team. (Pls.' Second Am.Compl. at 8.)

The White complaint, which originally sought only injunctive relief, was amended to seek both antitrust damages and injunctive relief stemming from the operation of the right of first refusal rules of Plan B, the college draft, the NFL Player Contract and the preseason pay rules. [FN5] Defendants, the NFL and its twenty-eight member clubs, answered the complaint, denying all of plaintiffs' material allegations and asserting various affirmative defenses and counterclaims.

FN5. The second amended complaint also alleges that defendants illegally fixed players' medical insurance

benefits and tortiously interfered with players' prospective contracts.

On January 6, 1993, the parties, with the assistance of this court, reached a tentative agreement to settle the present action. By order dated January 6, 1993, as amended and reaffirmed on February 17, 1993, the court certified, for the purposes of settlement, a damages and injunctive relief class pursuant to Federal Rule of Civil Procedure 23(b)(1) consisting of: (i) all players who have been, are now, or will be under contract to play professional football for an NFL club at any time from August 31, 1987 to the date of final approval of the settlement of this action and the determination of any appeal therefrom, and (ii) all college and other football players who, as of August 31, 1987, through the date of final approval of the settlement of this action and the determination of any appeals therefrom, have been, are now, or will be eligible to play football as a rookie for an NFL team. See White v. National Football League, Civ. No. 4-92-906, slip op. (D.Minn. Jan. 6, 1993) (entered nunc pro tunc); White v. National Football League, Civ. No. 4-92-906, slip op. (D.Minn. Feb. 17, 1993).

On February 26, 1993, plaintiffs and defendants entered into a Stipulation and Settlement Agreement ("the original Settlement Agreement") which set forth the terms of the settlement as originally proposed. The Settlement Agreement was designed to bring an end to both the present

action and a wide range of related cases. [FN6]

FN6. As the court noted in its order of April 30, 1993: Those mandatory class certification orders have provided a vehicle for the settlement of, among other things, all player challenges to the Plan B veteran player reservation rules, the college draft and the preseason pay rules. White, 822 F.Supp. at 1395. For many years, those and other player rules have been the source of numerous disputes between players and the NFL. See id. at 1394 n. 2, 1416 n. 36 (listing various player disputes).

In an order dated February 26, 1993, this court granted preliminary approval of the original Settlement Agreement. See White v. National Football League, Civ. No. 4-92-906, slip op. at 2-3 (D.Minn. Feb. 26, 1993). Pursuant to Federal Rule of Civil Procedure 23(e), the court ordered plaintiffs, at their own expense, to send written notice by mail to class members. [FN7] The court also ordered plaintiffs to publish a summary notice in USA Today. The notices, the contents of which were approved by the court, described the terms of the proposed settlement and informed all class members that a final approval hearing would be held on April 16, 1993, to determine whether the proposed settlement was fair, reasonable and adequate. The notices also informed class members that they had a right to submit written objections and to appear at the final approval hearing, in person or by counsel, to be heard in support of, or in opposition to, the settlement, or make any other

statement of their position concerning the settlement. See id.

FN7. On March 12, 1993, plaintiffs mailed notice to 4,957 class members who are current or former NFL players. During the week of March 8, 1993, plaintiffs mailed notices to 343 college players who attended the 1993 NFL Rookie Combine.

In a class of more than 5,000 players, objections to the original Stipulation and Settlement Agreement were filed on behalf of seventy-three active or former NFL players. [FN8] In addition, objections to the original settlement were filed on behalf of one NFL member club, the Philadelphia Eagles, sixteen college players, [FN9] and one player agent. [FN10]

FN8. As of the deadline for filing objections to the original Stipulation and Settlement Agreement, April 2, 1993, the following active or former NFL players had filed objections: Wilber Marshall, Paul Gruber, Brian Washington, Carl Lee, Mark Dusbabek, Audray McMillian, Felix Wright, Cody Risien, Mark Harper, Sammy Martin, Mike Farr, Pepper Johnson, Don Beebe, Gregory Scales, Gregory J. Baty, Barry Sanders, Luis Sharpe, Steve Atwater, Horatio Benny Blades, James Hasty, Byron Evans, Michael C. Johnson, Reggie Langhorne, Maurice Hurst, John Fourcade, Sean Jones, Eric Allen, Leslie O'Neal, Eric

Sanders, Ken Norton, Jr., Curtis Duncan, Patrick Hunter, William C. Matthews, Cris Dishman, Lomas Brown, Neil Smith, Van Waiters, Broderick Thompson, Terry Orr, Shane Collins, Ron Middleton, Mark Schlereth, Kelly Goodburn, David Gulledge, Ed Simmons, Matt Elliott, Joe Jacoby, Sidney Johnson, Kurt Gouveia, Ravin Caldwell, Mark Rypien, James Jenkins, Johnny Thomas, Eric Williams, Don Warren, John Elliott, Duane Bickett and Steve Young. After the April 2, 1993 deadline, additional objections to the original Stipulation and Settlement Agreement were filed on behalf of Brian Blades, Roland James, Pat Carter, Kenneth F. Ruettgers, Jerry Ball, Jeff Bostic, Todd Bowles, Ray Brown, Jason Buck, Earnest A. Byner, Desmond Howard, Anthony Johnson, Brian Mitchell, Ricky Sanders and Paul Siever. At the hearing for final approval of the original Stipulation and Settlement Agreement, the court granted all motions to extend time, ruling that all objections filed as of the hearing date, April 16, 1993, would be considered by the court, whether such objections were timely filed or not. The court further ruled that April 16, 1993, was the deadline for objections to the original version of the Stipulation and Settlement Agreement, and that it would not consider any objections filed after that date. On February 10, 1993, the Tice action, another case involving preseason claims, was transferred from the District of Columbia to this court by order of Judge Royce C. Lamberth. Tice v. Pro Football, Inc., 812 F.Supp. 255 (D.D.C.1993); Tice, 812 F.Supp. 255

(D.Minn. transferred Feb. 10, 1993). At the preliminary approval hearing, some of the Tice plaintiffs objected to the settlement of the preseason pay claims within the context of White. Those objections were withdrawn for purposes of final approval of the original Settlement Agreement, although a few players have filed individual objections to the settlement of the preseason pay within the scope of the White class action. (See, e.g., Letter from Gregory J. Baty to the court dated March 31, 1993) ("the Tice case regarding preseason pay claims should not have been included in any Reggie White settlement").

FN9. One college player, Brian Pressler, filed a timely objection to the original Stipulation and Settlement Agreement, purportedly on behalf of himself and all other present and future "college and other football players" similarly situated. Untimely objections to the original Agreement were filed on behalf of college players Jesse Becton, Scott Brown, Rudy Thompson, Ernie Lewis, Eugene Brown, Percy Coleman, James Chinn, Ron Alexander, Brad LaCombe, Dan Purcell, Steve Ross, Ron Moran, Steve Robinson, Garrett Washington and Bennie Hargro. None of the foregoing college players were drafted in the 1993 College Draft or signed contracts with any NFL club for the 1993 season.

FN10. Robert J. Sheridan, who represents the sixteen college player- objectors, filed the objection

purportedly on behalf of himself, and all other present and future agents and attorney-agents similarly situated.

On April 16, 1993, the court held a final approval hearing on the original Stipulation and Settlement Agreement. The court heard arguments by counsel and class members both in support of and in objection to the proposed settlement. The court also heard testimony of various witnesses concerning the proposed settlement. [FN11] By order dated April 30, 1993, the court certified a mandatory settlement class pursuant to Federal Rule of Civil Procedure 23(b)(1), overruled all objections and granted final approval of the settlement. White v. National Football League, 822 F.Supp. 1389 (D.Minn.1993). In so ruling, the court specifically found that:

FN11. Any person who wanted to argue or testify was permitted to do so.

(a) The terms of the Stipulation and Settlement Agreement fundamentally modify the NFL's rules, policies and practices regarding veteran player movement and employment. The settlement also fundamentally modifies by agreement the college draft, the NFL Player Contract, and various other terms and conditions of NFL player employment. (b) The revised player mobility and employment rules represent a successful effort by NFL players to eliminate Plan B, and to bring about substantial

modifications in the principles relating to veteran player transfers. (c) Under Eighth Circuit law, when evaluating the present Settlement Agreement, it is unnecessary for the court to determine whether every provision of the settlement, if adopted outside a settlement context and made subject to a trial on the merits, would be deemed reasonable after a full rule of reason inquiry. In fact, the court should not make such inquiry. (d) The Settlement Agreement, as a whole, is not per se illegal. (e) The court overrules all objections for the reasons previously set forth, and concludes that the overall agreement is fair, reasonable and adequate to the class. Id. P 7.29, at 1431-32. The court further concluded that class members had been properly notified of the proposed class certification and the terms of the original settlement, id. s I, at 1399-1402, and that due process did not require that absent class members be given the right to opt out of the White class. Id. s III, at 1410-12. [FN12]

FN12. The court also permitted various objectors to intervene solely for purposes of preserving their right to appeal, id. s VIII, at 1432-33, and granted defendants' motions to permanently enjoin various other lawsuits. Id. s IX, at 1433-35.

In addition to its rulings concerning the settlement itself, the court also made various findings concerning the status of the NFLPA in its order dated April 30, 1993. In

August 1987, the last collective bargaining agreement between players and defendants expired ("the 1982 Collective Bargaining Agreement"). [FN13] In Powell v. National Football League, a class action in which players sought to challenge, inter alia, a predecessor of the Plan B veteran player restraints, the Eighth Circuit determined that the nonstatutory labor exemption [FN14] would continue to protect NFL veteran player rules from antitrust scrutiny after the expiration of a collective bargaining agreement as long as an "ongoing collective bargaining relationship" existed between the players and the NFL. 888 F.2d 559, 568 (8th Cir.1989), superseded by, 930 F.2d 1293, 1303 (8th Cir.1989), cert. denied, 498 U.S. 1040, 111 S.Ct. 711, 112 L.Ed.2d 700 (1991). [FN15] The Eighth Circuit did not, however, specify at what point the exemption would end, or what actions would be required to terminate the collective bargaining relationship. Powell, 930 F.2d at1303 cents R93220348;0012;91084290 ("Upon the facts currently presented by this case, we are not compelled to look into the future and pick a termination point for the labor exemption.")

FN13. However, the 1982 Collective Bargaining Agreement provided that the provisions concerning the college draft would not expire until "at least 1992". See 1982 Collective Bargaining Agreement art. XIII, s 1 ("Commencing with the college draft to be held on or about May 1, 1983, and with respect to the college draft to be

held on or about May 1 each year thereafter, through at least 1992, the following principles will apply....").

FN14. As this court previously noted: The nonstatutory labor exemption ... exempts certain anticompetitive union- employer activities from antitrust sanctions. The Supreme Court has recognized that in order to properly accommodate the congressional policy favoring free competition in business markets with the congressional policy favoring collective bargaining under the National Labor Relations Act, 29 U.S.C. s 151 et seq., certain union-employer agreements must be accorded a limited nonstatutory exemption from antitrust sanctions. Generally, whether the nonstatutory exemption will protect a particular agreement turns upon whether the relevant federal labor policy is deserving of preeminence over federal antitrust policy under the circumstances of the particular case. Powell v. National Football League, 678 F.Supp. 777, 782 (D.Minn.1988) (citations omitted), rev'd on other grounds, 888 F.2d 559, 568 (8th Cir.1989), superseded by, 930 F.2d 1293, 1303 (8th Cir.1989), cert. denied, 498 U.S. 1040, 111 S.Ct. 711, 112 L.Ed.2d 700 (1991); see generally Daniel J. Gifford, Redefining the Antitrust Labor Exemption, 72 Minn.L.Rev. 1379, 1404-08 (1988) (detailing history of the nonstatutory labor exemption); Note, Releasing Superstars from Peonage: Union Consent and the Nonstatutory Labor Exemption, 104 Harvard L.Rev. 874, 875-78 (1991) (discussing genesis of the exemption).

FN15. In reaching that result, the Eighth Circuit overturned this court's ruling that the nonstatutory labor exemption terminates when the parties reach impasse on a particular term or condition of employment. See Powell, 678 F.Supp. at 786-89 (holding that exemption terminates at impasse); McNeil v. National Football League, 790 F.Supp. 871, 881-84 (D.Minn.1992) (discussing the history of this court's rulings in Powell on the scope of the nonstatutory labor exemption); see generally Jonathan S. Shapiro, Note, Warming the Bench: The Nonstatutory Labor Exemption in the National Football League, 61 Fordham L.Rev. 1203, 1218-27 (1993) (discussing Eighth Circuit's reversal of this court's determination that impasse was the proper termination point for the exemption, exploring the merits of various termination points and concluding that impasse represents the "best solution").

In light of the Eighth Circuit's decision in Powell, players and the NFLPA sought to terminate the collective bargaining relationship so that players would be free to pursue their antitrust claims. This court, in its order of May 23, 1991, determined that various actions taken by the players and the NFLPA resulted in the termination of the NFLPA's "status as a labor organization" sometime in November or December of 1989. Powell v. National Football League, 764 F.Supp. 1351, 1356 (D.Minn.1991) (holding only in McNeil); see Pittsburgh Steelers, Inc., No. 6-CA-23143, 1991 WL 144468, at *4 (June 26, 1991)

(opinion by the Associate General Counsel of the NLRB finding that "the NFLPA has effectively disclaimed its representational rights and has converted itself from a Section 2(5) labor organization to a trade association"). On June 12, 1991, the Eighth Circuit denied defendants' motion for interlocutory appeal of this court's determination in McNeil that the NFLPA had ceased to function as a labor union. McNeil, No. 91-8088 (8th Cir. June 12, 1991). As a result, eight individual players were able to pursue their antitrust claims in McNeil.

After the parties reached a tentative global settlement, the Board of the NFLPA passed a resolution seeking to again become the collective bargaining representative of the players. [FN16] In mid-January 1993, the NFLPA began to collect authorization cards from NFL players designating it as their exclusive collective bargaining representative.

FN16. The NFL defendants still maintain that the NFLPA has never ceased to function as the players' bargaining representative, and thus the nonstatutory labor exemption has never ended.

By letter dated March 23, 1993, the NFLPA informed the NFL that: [a] majority of the players on 1992 season-ending rosters have now signed cards authorizing the NFLPA to represent them for purposes of collective bargaining. (Letter from Richard A. Berthelsen to Paul

Tagliabue dated March 23, 1993.) After an independent entity, the American Arbitration Association, confirmed the authenticity of the cards, the NFL voluntarily recognized the NFLPA as the exclusive collective bargaining representative of the NFL players. (Letter from Harold Henderson to Eugene Upshaw dated March 29, 1993.)

On March 31, 1993, the NFLPA and representatives of the NFL Management Council, the multi-employer bargaining unit of the NFL owners, began negotiating in an effort to reach a new collective bargaining agreement. Those negotiations remained ongoing as of April 30, 1993, the date on which the court granted final approval of the original Stipulation and Settlement Agreement. White, 822 F.Supp. at 1397 n. 9.

In the order of April 30, 1993, the court made the following findings concerning the NFLPA: (1) The NFLPA has been lawfully formed and selected by the players to serve as the exclusive collective bargaining representative of all present and future NFL players. (2) Neither the NFL nor any of its members have taken any action which in any way hindered or supported the formation of the NFLPA as the exclusive collective bargaining representative of all present and future NFL players. (3) The NFL and its member clubs have lawfully recognized the NFLPA as the players' exclusive collective bargaining representative. (4) Accordingly, the NFLPA is fully authorized and empowered to enter into a new collective bargaining agreement with the NFL and its member clubs. Id. P 10.7, at 1435-36.

The original Settlement Agreement anticipated that the parties might reach a new collective bargaining agreement which incorporated those player movement rules set forth in the Settlement Agreement. The court did not enter final judgment on its order of April 30, 1993, because the parties were still attempting to negotiate such an agreement.

On May 6, 1993, the NFLPA and the NFL reached agreement on the terms of a new collective bargaining agreement (hereinafter "the Collective Bargaining Agreement"). On that date, the parties to various lawsuits involving the NFLPA's group licensing program also reached final agreement on the terms of a settlement of those group licensing cases. As a result of those negotiations, the parties also agreed to amend various provisions of the Stipulation and Settlement Agreement, and plaintiffs moved the court to approve those amendments ("the proposed amendments"). The parties also made a joint motion requesting that the court reconfirm its prior findings and make further factual findings concerning the NFLPA's status and the scope and applicability of the nonstatutory labor exemption ("the requested findings").

The court held another preliminary hearing on June 1, 1993, to determine whether the proposed amendments to the Settlement Agreement and the requested findings fell within the range of possible approval, and whether the proposed notice and method by which notice would be given satisfied the requirements of due process. The court heard

arguments both in support of and opposition to the pending motions. [FN17] On June 2, 1993, the court preliminarily approved the proposed changes, scheduled a final settlement hearing for July 7, 1993, and ordered that notice of the proposed changes and date of the final hearing be provided to the class. [FN18] White v. National Football League, Civ. No. 4-92-906, slip op. at 6-7 (D.Minn. June 2, 1993). [FN19] The order further required that any class member wishing to appear at the final settlement hearing file notice of such intent, along with any papers setting forth the class member's position concerning the pending motions, by June 22, 1993. See id. at 7-8.

FN17. All those who had previously objected to the original Stipulation and Settlement Agreement were notified of the preliminary approval hearing on June 1, 1993. Representatives of the following objectors were present at that hearing: Carl Lee, Mark Dusbabek, Audray McMillian, Felix Wright, Cody Risien, Mark Harper, Sammy Martin, Don Beebe, Gregory Scales, Byron Evans, Paul Gruber, Terry Orr, Shane Collins, Ron Middleton, Mark Schlereth, Kelly Goodburn, David Gulledge, Ed Simmons, Matt Elliott, Joe Jacoby, Sidney Johnson, Kurt Gouveia, Ravin Caldwell, Mark Rypien, James Jenkins, Johnny Thomas, Eric Williams, Don Warren, Jeff Bostic, Todd Bowles, Ray Brown, Jason Buck, Earnest A. Byner, Desmond Howard, Anthony Johnson, Brian Mitchell, Ricky Sanders and Paul Siever. Counsel for the Philadelphia

Eagles was also present. At the hearing, all persons who requested the opportunity to speak were permitted to do so.

FN18. See infra s I (setting forth details of notice provided to the class).

FN19. Despite objections to its jurisdiction based on the filing of various interlocutory appeals of the April 30, 1993 order, the court further concluded that it has jurisdiction to determine the present motions. Id. at 3-4; see infra note 20 (listing players who asserted jurisdictional objections as a result of the appeals); see infra s XII (discussing that issue).

As of July 7, 1993, the date of the final settlement hearing, twenty-eight players, all of whom had previously objected to the terms of the original Stipulation and Settlement Agreement, filed objections to the motions currently before the court. [FN20] One defendant, the Philadelphia Eagles, has filed objections to both the original settlement and the pending motions.

FN20. Those players are: Carl Lee, Mark Dusbabek, Audray McMillian, Felix Wright, Cody Risien, Mark Harper, Sammy Martin, Don Beebe, Gregory Scales, Sean Jones, Eric Allen, Leslie O'Neal, Eric Sanders, Ken Norton, Jr., Curtis Duncan, Patrick Hunter, William C. Matthews, Cris Dishman, Lomas Brown, Neil Smith, Van

Waiters, Broderick Thompson, Jerry Ball, Wilber Marshall, Paul Gruber, Byron Evans, Maurice Hurst and John Fourcade. Counsel for a group of twenty-seven additional players appeared at the preliminary hearing on June 1, 1993, and objected to the court's jurisdiction to entertain the present motions. As the court noted in its order granting preliminary approval on June 2, 1993: As a result of the filing of appeals of the court's order of April 30, 1993, various other players object to the court's jurisdiction, specifically Terry Orr, Shane Collins, Ron Middleton, Mark Schlereth, Kelly Goodburn, David Gulledge, Ed Simmons, Matt Elliott, Joe Jacoby, Sidney Johnson, Kurt Gouveia, Ravin Caldwell, Mark Rypien, James Jenkins, Johnny Thomas, Eric Williams, Don Warren, Jeff Bostic, Todd Bowles, Ray Brown, Jason Buck, Earnest A. Byner, Desmond Howard, Anthony Johnson, Brian Mitchell, Ricky Sanders and Paul Siever. (See Letter to court from Robert A. Brunig dated May 28, 1993.) At the hearing, counsel for those players renewed the jurisdictional objections and raised other grounds for objection. White v. National Football League, Civ. No. 4-92-906, slip op. at 5 n. 5 (D.Minn. June 2, 1993). Counsel for those players, however, did not file a notice of intent to appear at the hearing on July 7, 1993, filed no further objections, and did not appear at the final settlement hearing. Thus, it is unclear whether those twenty-seven players continue to object to the pending motions.

Despite published notice, and notice mailed to those class members most likely to be affected by the proposed changes to the Settlement Agreement, see infra Section I (detailing notice), as of the date of this order, August 19, 1993, there have been no new persons filing objections to the pending motions. Moreover, on June 18, 1993, the NFLPA announced the ratification of the new Collective Bargaining Agreement, which incorporates almost verbatim the player movement rules contained in the amended version of the Settlement Agreement. The vast majority of the players who voted, more than ninety-six percent, supported the ratification of the new Collective Bargaining Agreement. [FN21] Supplemental Declaration of Douglas F. Allen P 2 (July 1, 1993) (hereinafter "Allen Supp.Decl.").

FN21. On June 18, 1993, the NFLPA announced that the players had ratified the new Collective Bargaining Agreement by a vote of 788 to 34. Allen Supp.Decl. P 2. Since that date, the NFLPA has received nine additional votes in support of ratification. Id.

On July 7, 1993, the court conducted the final settlement hearing. All persons who wished to speak were permitted to do so, and the court heard argument both in support of and against the amended Settlement Agreement and the requested findings. [FN22] The court also requested that any proposed findings concerning the pending motions be submitted by July 14, 1993, and considered all

such submissions. [FN23]

FN22. The following objectors were represented at the hearing on July 7, 1993: Carl Lee, Mark Dusbabek, Audray McMillian, Felix Wright, Cody Risien, Mark Harper, Sammy Martin, Don Beebe, Gregory Scales, Sean Jones, Eric Allen, Leslie O'Neal, Eric Sanders, Ken Norton, Jr., Curtis Duncan, Patrick Hunter, William C. Matthews, Cris Dishman, Lomas Brown, Neil Smith, Van Waiters, Broderick Thompson, Jerry Ball, Wilber Marshall, Paul Gruber, Byron Evans and the Philadelphia Eagles. Counsel for Mr. Marshall, Mr. Gruber and the Philadelphia Eagles were the only representatives who spoke at that hearing.

FN23. Proposed findings of fact and conclusions of law concerning the pending motions were submitted on behalf of: Carl Lee, Mark Dusbabek, Audray McMillian, Felix Wright, Cody Risien, Mark Harper, Sammy Martin, Don Beebe, Gregory Scales, the named plaintiffs, all of the defendants except the Philadelphia Eagles, the Philadelphia Eagles, Maurice Hurst, John Fourcade, Sean Jones, Eric Allen, Leslie O'Neal, Eric Sanders, Ken Norton, Jr., Curtis Duncan, Patrick Hunter, William C. Matthews, Cris Dishman, Lomas Brown, Neil Smith, Van Waiters, Broderick Thompson and Jerry Ball.

As noted in its order of April 30, 1993, the court has

an extensive record on which to evaluate the fairness, reasonableness and adequacy of both the original Settlement Agreement, and the motions currently pending. That record includes the voluminous submissions in the present action, and the court's personal knowledge as a result of presiding over both the present action and its predecessors for more than five years, [FN24] including the ten-week jury trial in McNeil. [FN25] White, 822 F.Supp. at 1397.

FN24. As set forth in its order of April 30, 1993: the court has full access to, and intimate familiarity with, the records in Powell, McNeil, Five Smiths v. National Football League, 788 F.Supp. 1042 (D.Minn. filed 1990), National Football League v. National Football League Players Ass'n & Hilton, Civ. No. 4-91-877 (D.Minn. filed Oct. 15, 1991), and Jackson v. National Football League, 802 F.Supp. 226 (D.Minn. filed Sept. 14, 1992). Of particular help to the court is the record in McNeil, which includes the McNeil trial transcript, comprising more than 8400 pages, and the evidence received in McNeil, which includes over 400 trial exhibits. The testimony and evidence received in the foregoing cases has also been supplemented by arguments of counsel and numerous legal memoranda. White, 822 F.Supp. at 1397.

FN25. The McNeil jury found that the Plan B right of first refusal/compensation rules (1) had "a substantially harmful effect on competition in the relevant market for the

services of professional football players"; (2) "significantly contribute[d] to competitive balance in the NFL"; and (3) were "more restrictive than reasonably necessary to achieve ... competitive balance." See McNeil, 1992 WL 315292, at *1 (special verdict form). The jury further found that all plaintiffs had suffered antitrust injury, although it awarded damages to only four of the eight plaintiffs in the total amount of $543,000, before trebling. See id.; infra note 39 (detailing damages awarded). The parties reached a tentative global settlement before the court had entered final judgment in McNeil. Because defendants were unable to appeal from the McNeil verdict, neither the liability nor damages issues raised in McNeil have been finally resolved. In its order of April 30, 1993, the court found that the McNeil case presented significant issues for appellate review, including the scope of the nonstatutory labor exemption, the application of the rule of reason under Section 1 of the Sherman Act, and the jury instructions regarding burden of proof and antitrust injury. White, 822 F.Supp. P 6.2(a), at 1418. The court further noted the existence of significant uncertainties concerning the nature and extent of damages that plaintiffs or other class members might be able to recover as a result of the operation of Plan B: In McNeil, the only Plan B case tried to date, the jury made clear that such damages are difficult to prove, awarding monetary damages to only four of the eight plaintiffs despite the fact that it found all eight had suffered economic injury as a result of the Plan B rules. Id. at 1399; see also Jackson v.

National Football League, 802 F.Supp. 226, 231 (D.Minn.1992) (many economic injuries alleged by professional football players "may be impossible to quantify in monetary terms", a difficulty "further confirmed by the jury's [verdict] in McNeil ").

That record has provided the court with: a comprehensive view of the workings of the NFL and the employment practices of its member clubs, the collective bargaining and labor relations history within the NFL, the nature and effects of the right of first refusal/compensation rules and other player-related rules, the terms of the proposed settlement and the nature and likely effect of the proposed NFL player rules. Id. at 1399. [FN26]

FN26. On June 3, 1993, the court ordered that the records in Powell, McNeil and Jackson be incorporated into the record of the present case. White v. National Football League, Civ. No. 4-92-906, slip op. at 3 (D.Minn. June 3, 1993).

Against that background, and for the reasons stated herein, the court grants the motion to amend the Stipulation and Settlement Agreement, grants final approval of the amended version of the Stipulation and Settlement Agreement, overrules all objections to the pending motions, denies plaintiffs' motion to sanction the Philadelphia Eagles, grants the motion for further factual findings, incorporates

all of the findings previously set forth in its order of April 30, 1993, and makes additional findings as set forth below.

I. PROPER NOTICE WAS GIVEN TO THE CLASS OF THE PROPOSED AMENDMENTS, THE MOTION TO GRANT FINAL APPROVAL OF THE AMENDED SETTLEMENT AGREEMENT AND THE REQUESTED FINDINGS CONCERNING THE NFLPA AND THE NONSTATUTORY LABOR EXEMPTION

1.1 The court has evaluated whether the terms of the amended Settlement Agreement and the requested findings are fair, reasonable and adequate using the two-stage procedure suggested in the Manual for Complex Litigation, s 30.44, at 241-42 (2d ed. 1985). [FN27] The first stage involved the court's preliminary determination of whether the amended Settlement Agreement and the requested findings fell within the range of possible approval, and whether class members should be notified of the pending motions, and the date of a final hearing on those motions. On June 2, 1993, the court determined that the amended version of the Settlement Agreement and the requested factual findings fell within the range of possible approval, and that class members should be notified of the motions and the date on which the court would conduct a final settlement hearing, July 7, 1993. White v. National Football League, Civ. No. 4-92-906, slip op. at 6-7 (June 2, 1993).

FN27. The court also followed that procedure for

purposes of determining whether the original Stipulation and Settlement Agreement was fair, reasonable and adequate. See White, 822 F.Supp. P 1.1, at 1399.

The second stage of the court's evaluation process involved sending notice to members of the class. The proposed amendments to the Settlement Agreement relate solely to various aspects of the new player movement system in the NFL; none of the proposed changes affects the amount of any settlement payment due to class members under the terms of the original Settlement Agreement. Thus, only those class members who continue to play for NFL clubs will likely be affected by the proposed amendments. The court therefore determined that plaintiffs should mail a copy of the approved notice to the following class members: (1) all players who were on the Active List of an NFL club at the end of the 1992 NFL season; (2) all rookies who were selected by an NFL club in the 1993 college draft; and (3) all other players, including rookie free agents, who have signed, since March 1, 1993, a contract with an NFL club for the 1993 NFL season. Id. at 6-8. The notice described the amendments to the Settlement Agreement and the requested findings, allowed class members to file objections to the pending motions prior to the final settlement hearing and provided that objectors would have an opportunity to appear and be heard at the final hearing. Id. Appendix A.

The court further ordered that: A Summary Notice

that is substantially similar to the one used for the original Stipulation and Settlement Agreement ... shall be published in one issue of an appropriate publication as soon as practicable after the date of entry of this order Id. at 7 (citation omitted).

1.2 As previously determined in the June 2, 1993, order granting preliminary approval, the court finds that the foregoing notice of the requested findings of fact, the proposed amendments to the Settlement Agreement and the final hearing on July 7, 1993, is proper and adequate as to timing, content and means of transmission. Id. (such notice is "found to be due, adequate and sufficient notice, and the best notice practicable under the circumstances").

1.3 With respect to the pending motions and the final hearing on July 7, 1993, the following notice was given:

(a) On June 4, 1993, court-approved notice of the July 7, 1993, hearing and summary of the terms of the proposed changes was mailed by first-class mail, postage prepaid, to all persons whom the parties have been able to determine, through their best efforts, are class members who were on the Week 17 Roster List of an NFL Club at the end of the 1992 NFL season, and with respect to whom the parties have been able to obtain a current or last-known mailing address. Affidavit of Arnold D. Herz of Dissemination of Notice to Class PP 2-3 (June 22, 1993) (hereinafter "Herz Aff.").

(b) On June 9, 1993, court-approved notice of the July 7, 1993, hearing and summary of the terms of the

proposed changes was mailed by first-class mail, postage prepaid, to most of the persons whom the parties have been able to determine, through their best efforts, are class members who had been selected in the 1993 NFL College Draft and/or had signed, between March 1, 1993 and June 7, 1993, a player contract for the 1993 NFL Season ("the rookie class members"), and with respect to whom the parties have been able to obtain a current or last-known mailing address. On June 10 and 11, 1993, the foregoing notice was mailed to the remaining rookie class members. Id. PP 4-6 & n. 1.

(c) Summary Notice substantially similar to that used for the original Stipulation and Settlement Agreement was published in the Sports Section of the June 10, 1993 National Edition of USA Today, a daily newspaper with a circulation of approximately 1,840,000. Id. P 8 & Exh. F.

(d) In addition to the foregoing, the NFLPA gave notice of the proposed changes to numerous class members during meetings that were conducted for purposes of obtaining player ratification of the new Collective Bargaining Agreement. On May 14, 1993, the proposed changes were also discussed during a seminar held by the NFLPA and attended by over one hundred agents who represent professional football players. Cf. Alexander v. National Football League, 1977-2 Trade Cas. (CCH) P 61,370, at 72,989, 1977 WL 1497, at *7 (D.Minn.1977) (circumstances that increase the effectiveness of published notice to professional football players include "the fact that

many class members are represented by agents or attorneys who stay conversant with player- club developments").

(e) Papers in support of the pending motions were served on all persons who had previously objected to the settlement, or their counsel. [FN28] Notice of the preliminary hearing on June 1, 1993, the proposed class notice and the proposed order for preliminary approval were also served on all of those individuals or their counsel. [FN29]

FN28. See supra notes 8-10 (listing persons who had objected to the original Stipulation and Settlement Agreement).

FN29. See supra note 17 (listing objectors whose representatives appeared at the preliminary approval hearing on June 1, 1993).

1.4 Class members were given extensive and proper court-approved notice of the requested factual findings and the proposed amendments to the Settlement Agreement, and had an adequate and reasonable opportunity to formulate and present meaningful objections to the pending motions. Class members received extensive notice of both the terms of the original Stipulation and Settlement Agreement and the final fairness hearing on April 16, 1993. See White, 822 F.Supp. s I, at 1399-1402 (detailing that notice). Persons who filed objections to the original Stipulation and

Settlement Agreement were notified of the pending motions and the date of the preliminary approval hearing. The original objectors had an opportunity to attend that hearing on June 1, 1993, and had nearly three weeks available to prepare and file objections between preliminary approval of the proposed changes on June 2, 1993, and the deadline for filing such objections, June 22, 1993. Class members who received mailed notice of the proposed changes had more than a week to prepare and file any objections, and almost four weeks notice of the date of the final hearing. In addition, almost four weeks were available between the publication of the Summary Notice in the June 11, 1993, edition of USA Today, and the final hearing date.

1.5 The court finds that the mailed and published notices clearly satisfy both Rule 23 and due process requirements. Overall, approximately 2,524 notices of the proposed changes were mailed to those class members most likely to be affected by the changes. Herz Aff. PP 2-7. Of those, a total of 99, or less than four percent, were returned by the Postal Service as undeliverable. Of the 99 returned notices, 91 were re-mailed to newly located addresses. Id. P 7. [FN30] See Grunin v. International House of Pancakes, 513 F.2d 114, 121 (8th Cir.) ("individualized notice by mail to the last known address [is] the 'best notice practicable' in a class action contest") (quoting Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 174-77, 94 S.Ct. 2140, 2151-2152, 40 L.Ed.2d 732 (1974)), cert. denied, 423 U.S. 864, 96 S.Ct. 124, 46 L.Ed.2d 93 (1975).

FN30. The NFLPA tried to obtain the addresses of all persons whose notices were returned as undeliverable. Herz Aff. P 7.

1.6 The court finds that the mailed and published notices of the July 7, 1993, hearing were reasonably calculated, under all of the circumstances of NFL football, to apprise class members of the pending motions and afford them an opportunity to object. See, e.g., Reynolds v. National Football League, 584 F.2d 280, 285 (8th Cir.1978); Grunin, 513 F.2d at 121 ("the mechanics of the notice process are left to the discretion of the court subject only to the broad 'reasonableness' standards imposed by due process") (citations omitted). The mailed and published notices fairly, reasonably and adequately conveyed to class members the requisite information concerning the proposed changes, and afforded a reasonable time in which class members could formulate and file their objections, if any, to the pending motions. See id.; cf. 2 Herbert Newberg & Alda Conte, Newberg on Class Actions s 11.57, at 11-140 (3d ed. 1992) ("the period from receipt of notice until the actual settlement hearing is often 30 days or less").

1.7 The mailed notices also stated that class members could obtain more detailed information concerning the proposed amendments and the present litigation from the court; the published notice provided that upon objection, further information could be obtained from class counsel. See Grunin, 513 F.2d at 122 ("[c]lass members are not

expected to rely on the notices as a complete source of settlement information") (citation omitted).

1.8 Based on the foregoing and all other evidence before the court, the court finds that pursuant to the requirements of Rule 23 and due process, proper notice of the requested factual findings and the terms of the amended Settlement Agreement has been given to class members. Accordingly, the court overrules any objections to the adequacy of the notice provided to the class.

II. A DEFINABLE CLASS EXISTS THAT SATISFIES THE REQUIREMENTS OF FEDERAL RULE OF CIVIL PROCEDURE 23(b)(1)

2.1 The court incorporates the findings previously set forth in Section II of its order of April 30, 1993, and supplements those findings as follows. See White, 822 F.Supp. s II, at 1402-10.

2.2 After the parties reached agreement on the terms of the original Stipulation and Settlement Agreement, class counsel and the NFLPA, in the course of negotiating the terms of the new Collective Bargaining Agreement, were able to obtain further concessions from the NFL defendants which provide substantial additional benefits to the class. See infra P 6.4 (setting forth additional benefits to class). The court finds that the proposed amendments reflecting those concessions, the NFLPA's negotiation of the new Collective Agreement and class counsel's participation in those negotiations further demonstrate that the settlement has been the product of arm's length negotiations, and that class

counsel have vigorously and adequately represented the interests of all class members. See Paxton v. Union Nat'l Bank, 688 F.2d 552, 562-63 (8th Cir.1982) (setting forth test by which to determine adequacy of representation), cert. denied, 460 U.S. 1083, 103 S.Ct. 1772, 76 L.Ed.2d 345 (1983).

2.3 The court also finds that the NFLPA's consultation in the negotiation of the original Settlement Agreement, the proposed amendments and the requested findings has substantially contributed to class counsel's ability to represent all members of the class and to negotiate a fair, reasonable and adequate settlement. The overwhelming ratification of the new Collective Bargaining Agreement, by a vote of 788 to 34, further confirms that class counsel's representation of the class has not been compromised, and that class counsel and the named plaintiffs have adequately represented all class members. See White, 822 F.Supp. PP 2.12-2.21, at 1404-07 (concluding that the named plaintiffs and class counsel adequately represent the White class).

2.4 Relying on the foregoing findings, and those previously set forth in the order of April 30, 1993, the court reaffirms that a definable class exists that satisfies the requirements of, and should be finally certified pursuant to, Federal Rule of Civil Procedure 23(b)(1). Cf. Reynolds, 584 F.2d at 283 (prior to Shutts, finding that certification of a 23(b)(1) class is appropriate in cases involving antitrust challenges to a system of player restraints because

"[a]ntitrust violations involving the rules and practices governing professional players may require the imposition of broadly based remedies").

III. DUE PROCESS DOES NOT REQUIRE THAT ABSENT CLASS MEMBERS BE GIVEN THE RIGHT TO OPT OUT OF THE WHITE SETTLEMENT CLASS

3.1 In its order of April 30, 1993, the court concluded "that due process does not require that absent class members be afforded an opportunity to opt out of the White class settlement." White, 822 F.Supp. P 3.6, at 1412. In making this determination, the court found that the Supreme Court's decision in Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985) does not preclude the certification of a mandatory class pursuant to Federal Rule of Civil Procedure 23(b)(1) in cases where claims for injunctive relief predominate over any claims for monetary damages. White, 822 F.Supp. P 3.2, at 1410-11. [FN31]

FN31. A number of players objected to the original settlement based on the contention that under Shutts, and its progeny, minimum due process requires that absent class members be afforded an opportunity to opt out of all class actions that involve claims for money damages. The court rejected that contention, and determined that: Shutts does not purport to make every mandatory non-opt-out class action unconstitutional. In Shutts, the Supreme Court determined that where a class action concerns claims

"wholly or predominantly for money judgments", absent class members must be given notice, an opportunity to oppose the class settlement and an opportunity to opt out. The Supreme Court, however, did not address class actions in which the claims for injunctive relief plainly predominate, and specifically stated that its holding was: limited to those class actions which seek to bind known plaintiffs concerning claims wholly or predominantly for money judgments. We intimate no view concerning other types of class actions.... White, 822 F.Supp. P 3.2(a), at 1410 (quoting Shutts, 472 U.S. at 811 n. 3, 105 S.Ct. at 2974); see also In re Jackson Lockdown/MCO Cases, 107 F.R.D. 703, 713-14 (E.D.Mich.1985) (distinguishing Shutts for purposes of certifying class action involving claims for monetary relief under Rule 23(b)(1)); 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure s 1789, at 255 (2d ed. 1986) (noting Supreme Court's explicit limitation); 1 Herbert Newberg & Alda Conte, Newberg on Class Actions s 1.19, at 1-48 (3d ed. 1992) (Shutts was silent concerning the validity of classes certified under Rule 23(b)(1) and "[i]t is highly unlikely that the Supreme Court would have invalidated [that] rule[ ] without expressly doing so"). The court also concluded that the Ninth Circuit's decision in Brown v. Ticor Title Ins. Co., 982 F.2d 386 (9th Cir.1992), does not alter the Shutts constitutional standard. In reaching that conclusion, the court noted that the Brown decision expressly recognized that "Shutts is limited to claims 'wholly or predominantly

for money judgments.' " White, 822 F.Supp. P 3.5, at 1412 (quoting Brown, 982 F.2d at 392 (quoting Shutts, 472 U.S. at 811 n. 3)). This court further found that the present settlement was distinguishable from the settlement challenged in Brown because Brown involved class claims that were "wholly or predominantly" for money damages, yet the challenged settlement provided no damages recovery but only injunctive relief. Id.

3.2 The court further determined that the present case is one "in which the plaintiff class's claims for structural, injunctive relief 'predominate' over its claims for damages." Id. P 3.3, at 1411. The court relied on various factors to support this conclusion, including: (a) the repeated motions for preliminary and permanent injunctive relief filed by the plaintiffs in Powell, McNeil, Jackson, and White; (b) the need to provide a meaningful class remedy by preventing future injuries and ongoing litigation through the implementation of broad structural injunctive relief; (c) the record, and particularly plaintiffs' testimony, in McNeil; (d) the repeated statements of class counsel, other player representatives, and defendants and their representatives emphasizing the necessity for major restructuring of player rules affecting the terms and conditions of employment; and (e) the terms of the original Stipulation and Settlement Agreement itself, which devoted 179 pages of the 188-page document to redefining the rules and practices governing player employment in the NFL. Id.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 9105 Sunset Boulevard, West Hollywood, California 90069; that on April 18, 1995, I served the within *Appendix For Petition For Writ of Certiorari (Volume I of IV)* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on April 18, 1995, Los Angeles, California.

Betty J. Malloy
(*Original Signed*)